

**MAR 17 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FRANCISCO GERONIMO SANTOS-  
SERRANO,

Defendant - Appellant.

No. 04-10605

D.C. No. CR-04-00140-DCB/JJM

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Arizona  
David C. Bury, District Judge, Presiding

Submitted March 8, 2006<sup>\*\*</sup>

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges.

Francisco Geronimo Santos-Serrano appeals from the 37-month sentence imposed following his guilty plea conviction for (1) conspiracy to possess with intent to distribute marijuana in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B)(vii)

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

and 846, and (2) possession with intent to distribute in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B)(vii). We have jurisdiction pursuant to 28 U.S.C. § 1291.

Because Santos-Serrano was sentenced under the then-mandatory Sentencing Guidelines, and because we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand to the sentencing court to answer that question, and to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005) (en banc). See *United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005) (extending *Ameline*'s limited remand procedure to cases involving nonconstitutional error).

**REMANDED.**